

EXHIBIT E

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12 for the Defendant.

13

14 ALSO PRESENT: Jackson W. Henson and
15 G.R. (Gerry) Deschenes.

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1 MICHAEL RODIO, a witness called in
2 behalf of the Defendant, first having been duly
3 sworn, on oath deposes and says as follows:

4 DIRECT EXAMINATION BY MR. LOFTIS:

5 Q. Mr. Rodio, good morning. We met
6 earlier. My name is Randy Loftis.

7 MR. SAHADY: Can we identify --
8 excuse me, Randy -- the people present, the names
9 of who they are?

10 MR. LOFTIS: Sure.

11 MR. HENSON: My name is Jack Henson,
12 senior counsel in the law department of
13 R.J. Reynolds Tobacco.

14 MR. DESCHENES: My name is Gerry
15 Deschenes. I am senior manager sales employment
16 practices with R. J. Reynolds Tobacco Company.

17 MR. SAHADY: Is he the same Gerry
18 Deschenes that we will be deposing tomorrow?

19 MR. LOFTIS: Correct.

20 MR. SAHADY: I would ask that he not
21 be present.

22 MR. LOFTIS: Let's take an off the
23 record and let's take a quick look at Rule 615.

24 (Discussion off the record.)

1 (Mr. Deschenes left the room and
2 did not return.)

3 MR. LOFTIS: Anything else before we
4 get started?

5 MR. SAHADY: The rules of the
6 deposition, what do you wish?

7 MR. LOFTIS: All objections reserved
8 except as to form of the question.

9 MR. SAHADY: And motions to strike
10 reserved until the time of the trial.

11 MR. LOFTIS: I am sorry. What?

12 MR. SAHADY: All objections except
13 as to form and motions to strike are reserved to
14 the time of the trial.

15 MR. LOFTIS: Except as to form.
16 That is fine.

17 MR. SAHADY: Except as to form.

18 Q. Okay. Mr. Rodio, ready to go?

19 A. Yes.

20 Q. Have you ever done this before?

21 A. No.

22 Q. All right. Let me suggest a couple of
23 things to you that I think will make this go
24 smoother and hopefully quicker. One, make sure you

1 understand my question. If you don't, just let me
2 know that you don't understand it and I will try to
3 give you a clearer question that you can
4 understand. Let me finish my question before you
5 begin your answer. Don't let me interrupt you
6 before you've completed your answer so that we make
7 sure we're clearly communicating with each other,
8 and a very important thing you need to only answer
9 my question. You may very well have a story that
10 you want to tell, but it is not going to help us in
11 this process if you tell your story instead of
12 answering my question. Do you understand that
13 point?

14 A. Yes.

15 Q. Okay. Can you do that for me?

16 A. Yes.

17 Q. Okay. So, I mean, I understand you need
18 to get to work today.

19 A. Well, yes, I have to work today.

20 Q. What time? Do you have a time you need
21 to be at work?

22 A. Well, you know, I have to be there right
23 now, but I will try to work a little bit later
24 today so I can get things done.

1 Q. I promise you if you only answer my
2 question, you will get through a whole lot quicker,
3 okay?

4 A. Yes.

5 Q. Fine. Let me have your full name.

6 A. Michael Paul Rodio.

7 Q. And where do you reside?

8 A. 32 Mount Street, Wrentham,
9 Massachusetts.

10 Q. And how long have you been at that
11 address?

12 A. Approximately 18 years.

13 Q. Does anyone live with you at the
14 residence?

15 A. Yes.

16 Q. Who would that be?

17 A. My wife, my daughter and my son.

18 Q. All right. And your wife's name?

19 A. Anne Rodio.

20 Q. How -- does she work outside of the
21 home?

22 A. She works, yes.

23 Q. Where is that?

24 A. She's a nurse at Health South.

1 Q. And your children are how old?

2 A. 17 my son and my daughter is 20.

3 Q. What is your educational background?

4 A. I have a degree from the University of
5 Massachusetts and Springfield Community College.

6 Q. And I believe after completing your
7 education, you went to work for R.J. Reynolds?

8 A. Yes.

9 Q. Did you have any other jobs prior to
10 going to work for R.J. Reynolds?

11 A. Many jobs.

12 Q. After graduating from college?

13 A. No. Not after, no.

14 Q. Now, I believe you are currently
15 employed at Commonwealth?

16 A. Brands, yes.

17 Q. Where are they based? Where is their
18 home office?

19 A. Bowling Green, Kentucky.

20 Q. When did you begin working at
21 Commonwealth?

22 A. February 3rd of last year, I believe.

23 Q. That would be 2003?

24 A. Yes.

1 Q. And what is your current position with
2 Commonwealth?

3 A. Northeast military manager Quantico.

4 Q. And what is your current compensation?

5 A. I think it's 32 or \$33,000 a year.

6 Q. You get any bonuses?

7 A. If we -- if the company makes their
8 goals, yes.

9 Q. And what if the company made its goals?

10 A. Their goal this year is for 15 percent,
11 but they may not make it.

12 Q. So you could get a bonus of up to 15
13 percent of your base pay?

14 A. Yes.

15 Q. All right. And --

16 A. Go ahead.

17 Q. I want to briefly get your work history
18 at R.J. Reynolds if you could just -- what
19 positions did you hold?

20 A. Sales rep and area sales rep.

21 Q. And when you left the company, were you
22 a --

23 A. Area sales rep.

24 Q. And during the period of time that you

1 worked for the company, did you have multiple
2 territories?

3 A. Yes.

4 Q. Okay. Tell me what -- when did you
5 became an ASR?

6 A. I think it's maybe in the early '80s,
7 late '80s.

8 MR. SAHADY: You're using acronyms
9 which I am not that familiar with.

10 A. Area sales rep.

11 MR. SAHADY: Just -- I am speaking
12 to Attorney Loftis. ASR is area sales rep; is that
13 right?

14 MR. LOFTIS: Right.

15 MR. SAHADY: Go ahead.

16 Q. As an area sales rep, what were your
17 responsibilities to the company?

18 A. Well, it changed from time to time, but
19 when I first started, it was to make your monthly
20 call, to introduce new product, try to maintain
21 existing distribution, make good financial
22 decisions and work on maintaining a good
23 relationship with store owners and contract
24 relations and making sure that the contracts were

1 enforced properly.

2 Q. All right. Did that change over time?

3 A. Well, it might have become more
4 elaborate by the invention of the computer. It --

5 Q. Did you get -- I believe you got a lap
6 top with the Introduction of Sales Force 2000; is
7 that correct?

8 A. I believe so, yes. Well, we had --
9 there were Norand computers for a while and then
10 went to lap tops.

11 Q. And the lap tops would do a lot more
12 than the Norands?

13 A. Yes.

14 Q. And I assume over the years that the
15 responsibilities and accountabilities of sales
16 reps, area sales reps, became more complex?

17 A. Yes.

18 Q. And the contracts became more complex?

19 A. Yes.

20 Q. And the contracts they were more
21 numerous contracts?

22 A. Yes.

23 Q. And the contracts changed?

24 A. Yes.

1 Q. So even the same contract would change --

2 A. Multiple.

3 Q. -- multiple times? As a sales rep, you
4 had to keep up with all of that?

5 A. Yes.

6 Q. And that was part of your job
7 responsibility?

8 A. Right.

9 Q. And you had with -- both with the
10 hand-held device and the lap top, you could go into
11 the store, one of your retail accounts, and report
12 data back to the company; is that correct?

13 A. Yes.

14 Q. Things like you would put in what -- you
15 would enter the product availability, correct?

16 A. Correct.

17 Q. And do you know what the company used
18 all that data for?

19 A. Well, I imagine in making marketing
20 decisions and business decisions.

21 Q. And to the best of your knowledge, all
22 sales reps were required to submit that data either
23 through the hand held or the computer?

24 A. Yes.

1 MR. LOFTIS: Let's mark this as

2 Exhibit 1.

3 (Exhibit Number 1 marked for

4 identification.)

5 Q. Can you identify what we've marked as

6 Exhibit Number 1?

7 A. It's area sales representatives, sales
8 representative, sales representative and job
9 responsibility, professional/managerial, technical,
10 business and personal dimensions.

11 Q. Have you seen that before?

12 A. Yes.

13 Q. And the date -- I believe it's on the
14 second page, looks like the date is 1/99. Do you
15 see on the lower left-hand corner? Page 2.

16 A. Yes.

17 Q. Do you believe this is a listing of all
18 of the responsibilities and accountabilities that
19 you had as an area sales rep during the last
20 several years you worked at the company to the best
21 of your knowledge?

22 A. Yes.

23 Q. If there is -- if there was any change,
24 it would have probably been to add something else,

1 correct?

2 A. Yes.

3 Q. Now, when did Carl Fasciani become your
4 manager?

5 A. Three-year period.

6 Q. Do you recall?

7 A. I would have to look it up. It was a
8 three-year period, so I would imagine -- I think
9 2000. You would have it in your records, wouldn't
10 you?

11 Q. I am sorry. I get to ask the questions.

12 A. Do you have that in your -- oh, okay.

13 Q. Had you known Mr. Fasciani before?

14 A. Never met the man.

15 Q. How did you -- was your territory
16 reassigned at some point in time?

17 A. Yes.

18 Q. And how -- what was the reason for that?

19 A. They had a restructuring of the company.

20 Q. Do you remember when that was? '99?

21 A. I think '99, 2000, somewhere around
22 there.

23 Q. That restructuring had been -- this
24 wasn't the first. There have been other

1 restructurings over the years?

2 A. Yes.

3 Q. And sales reps were realigned based on
4 certain companies?

5 A. Right.

6 Q. Let me go ahead and hand you what we'll
7 mark as Exhibit 2.

8 (Exhibit Number 2 marked for
9 identification.)

10 Q. You can go ahead and take a look at
11 Exhibit 2 which you have got right in front of you.
12 That is the 2000 evaluation which would reflect
13 your performance in 1999; is that correct? You see
14 the dates?

15 A. Yes. It looks to be the same.

16 Q. It is out of your personnel file if that
17 helps.

18 A. Yes.

19 Q. It's dated January of 2000, correct?

20 A. Yes.

21 Q. And it's an evaluation of your
22 performance in the calendar year 1999, correct?

23 A. Yes.

24 Q. Now, I am going to point out a couple of

1 things in this evaluation to you. You'll probably
2 need to be looking at the exhibit itself. On the
3 first page -- let me tell you something that may
4 help as we go through. If you look on the lower
5 right-hand corner, you will see a numbering system,
6 number on the lower right.

7 A. Yes.

8 Q. See 42?

9 A. Yes.

10 Q. That's a number that was stamped on the
11 documents by my office as they were provided to
12 your attorney, so I will refer to page numbers and
13 I'll use those numbers periodically throughout the
14 day, okay?

15 A. Okay.

16 Q. On page 42 the handwritten part the
17 first sentence says "increased RJR exposure and
18 presence in the Fall River market." Do you believe
19 that to be an accurate statement?

20 A. Yes.

21 Q. And I think -- would you view that --
22 that's a positive comment, is it not?

23 A. Yes.

24 Q. And then on page 43 where it shows

1 previous development needs -- and that would be
2 from last year's plan evaluation, correct -- it
3 says previous development needs results against
4 last year's development plan needs. Do you see
5 where I am?

6 A. Umm hmm.

7 Q. One other rule. You need to say yes or
8 no.

9 A. Yes.

10 Q. And the first line talks about call
11 count. What is call count?

12 A. How many calls you do every day.

13 Q. And was that something that the company
14 tracked?

15 A. Hmm.

16 Q. Is that something the company tracked?

17 A. Yes.

18 Q. For you and all other sales reps?

19 A. Yes.

20 Q. And it says your average call count was
21 below division average. Do you have any reason to
22 believe that is not true?

23 A. If they wrote that, that must be true.

24 Yes. I mean, I don't know, what was the division

1 average that year?

2 Q. I am asking whether you've got any
3 reason to believe that is a false statement?

4 MR. SAHADY: Objection. Asked
5 through the firm. You may answer, Mr. Rodio, if
6 you can.

7 A. I am not sure because I don't know what
8 the average was that year.

9 Q. How many years have you been -- this was
10 in 2000. You had been with the company how long at
11 that time?

12 A. Probably 23 years.

13 Q. Do you think your call count should have
14 been below the division average --

15 MR. SAHADY: Objection again.

16 Q. -- if it was?

17 MR. SAHADY: You may answer.

18 Q. If your call count was below division
19 average, do you think that was acceptable?

20 A. Some of the senior reps had more time
21 off. By taking more time, you work less days, so
22 sometimes you couldn't stay as high as the rest of
23 them. I don't believe -- I think the average --
24 the goal that year was seven calls per day.

1 Q. Might be higher than the less than
2 average?

3 A. Yes.

4 Q. On the next line it says "Mike shows
5 highest PMX percentage." Is that Phillip Morris
6 exclusive?

7 A. Yes. I was transferred to this
8 assignment. The previous assignment I had low PMX.
9 I had good relations with my accounts. This area,
10 for whatever reason -- I don't know if the salesman
11 had trouble here or what -- was in very poor
12 condition, and it was a very uphill battle. We had
13 the lowest share in the market, the whole
14 northeast.

15 Q. I only asked you if PMX meant Phillip
16 Morris exclusive.

17 A. Oh, okay. Sorry.

18 Q. Now, on the bottom of that in this box
19 where it says previous development, the very last
20 paragraph, it says improve administration/knowledge
21 of computer applications. Mike fails to meet his
22 accountability of handling administration functions
23 and you continue to read the rest of it.

24 A. This was an opinion of one person.

1 Q. Was it administrative?

2 A. I had no problem with administration.

3 Q. Was administrating responsibility part
4 of your job?

5 A. Of course, you're assigned.

6 Q. What was included within the
7 administrating?

8 A. Reporting of calls, reporting of
9 contracts, upgrading contracts, making sure they
10 are on time, writing them up.

11 Q. Contract compliance?

12 A. Compliance, make sure it's done.

13 Q. Maintaining POS?

14 A. Maintaining -- POS was very well
15 maintained.

16 Q. Now, that was also an administrative
17 responsibility?

18 A. I don't know if they call that
19 administrative but maybe. POS, yes.

20 Q. Did you attend training on the lap top?

21 A. Yes.

22 Q. Where was that? Was that in
23 Winston-Salem?

24 A. We had several classes. Some were in

1 Winston-Salem years ago. We had some in hotel
2 rooms, casinos.

3 Q. And effectively utilizing that computer
4 was part of your responsibility as well?

5 A. Yes.

6 Q. Okay. Next page is 43.

7 MR. SAHADY: We're on 43.

8 MR. LOFTIS: I mean 44. I am sorry.

9 Q. You will see the notation -- if you read
10 the summary, it sounds like the review is saying
11 that you made positive interroads. You've
12 increased RJR exposure, but where I find you
13 deficient is in the area of administration and
14 communication; is that correct? Is that an
15 accurate assessment?

16 MR. SAHADY: Objection. The
17 document speaks for itself.

18 A. No.

19 Q. All right.

20 A. Actually, I worked very hard on
21 administration and got everything as best I could
22 in on time. There were times with the computers
23 they were having problems, not up to my abilities,
24 and sometimes the computer communications wouldn't

1 go through. It wasn't my problem, but I worked as
2 hard as I could to make sure that everything was
3 done properly.

4 Q. Did everybody have the same computer?

5 A. Well, some of the people's computers
6 broke down, so they had newer computers, and some
7 of the people had older computers, and the older
8 ones had sometimes a tendency at the end of their
9 life to break down during the day. The battery
10 would die, whatever, so you would have to try to do
11 things from memory or jot down things.

12 Q. Did you -- so you got your computer as
13 part of Sales Force 2000?

14 A. I believe so, yes.

15 Q. And that was an issue that came out in
16 1995?

17 A. I couldn't tell you.

18 Q. Whenever it was, did you get a new
19 computer during the period of time that you worked
20 for the company?

21 A. I got several computers.

22 Q. And when batteries broke down, you would --
23 what you would do then or what any sales rep would
24 do when they had a problem with the computer would

1 you make notes of what you were supposed to enter?

2 A. Try to make notes as best you could,
3 write them down.

4 Q. When you enter the computer -- let's
5 take product availability, for example, you enter
6 into the computer what brands were available in the
7 store; is that correct?

8 A. Could be 40 to 50 entries, between 40
9 and 50 entries.

10 Q. And so when the computer broke down, you
11 had to write down --

12 A. Yes, so if you had ten calls that day,
13 you had to make 500 notes. That is just on
14 entries, and you had other notes and questions you
15 had to make notes on so human -- I did as best I
16 could humanly possible to make the notes I could.

17 Q. But doing as best as you could seemed
18 impossible -- is it not possible that you did make
19 errors when you entered the stuff at home that
20 night?

21 MR. SAHADY: Objection.

22 Q. Do you think you never made a mistake?

23 MR. SAHADY: Objection.

24 A. I couldn't tell you.

1 Q. Were you ever late in responding to
2 anything?

3 A. Was I ever late?

4 MR. SAHADY: Objection. Too broad.

5 A. I'm --

6 MR. SAHADY: Wait until I've
7 finished my reason for the objection. When you say
8 "anything," that could cover a multitude of things.

9 Q. Were you ever late in fulfilling any of
10 your responsibilities to the company?

11 MR. SAHADY: Objection. What
12 responsibilities?

13 MR. LOFTIS: I don't think -- object
14 to the form of the question but that is the only
15 thing that is reserved.

16 MR. SAHADY: Fair enough. Go ahead.
17 You may have it. Can you answer that?

18 A. It's possible I was late on something.
19 I can't tell you exactly what.

20 MR. LOFTIS: Mark that.

21 A. I was early on some things, too.

22 (Exhibit Number 3 marked for
23 identification.)

24 Q. All right. Exhibit Number 3, Mr. Rodio,

1 is an e-mail. Did you get e-mails on your lap top
2 as well?

3 A. Yes.

4 Q. I believe e-mails read from the bottom
5 up or at least these do, so the original message
6 was from Amy Maguire sent on February 28th. Do you
7 see that?

8 MR. SAHADY: March 1st, 2000. Do we
9 have the same?

10 MR. LOFTIS: You read from the
11 bottom up.

12 MR. SAHADY: Oh, bottom up.

13 MR. LOFTIS: The earliest e-mail
14 would be from Amy Maguire, and it goes out to a
15 bunch of people including Mr. Rodio.

16 Q. Do you see that, Mr. Rodio?

17 A. Yes.

18 Q. And it says "please respond by Friday,
19 3/300 with draft information for the below drafts."
20 Do you see your name below that?

21 A. Yes.

22 Q. Do you know why you would have gotten
23 five requests to send this information in?

24 A. I don't remember getting five requests,

1 but if I would have gotten one request, I would
2 have answered it. There must have been a reason.

3 Q. Why you didn't answer?

4 A. No, because if I received something that
5 is a request, I answered it. Possibly I didn't
6 receive the previous e-mails.

7 Q. Who is Amy Maguire?

8 A. She was Mr. Kane's secretary.

9 Q. And what is his position?

10 A. He was the regional manager.

11 MR. LOFTIS: Mark this.

12 (Exhibit Number 4 marked for
13 identification.)

14 Q. One other question about Exhibit 3,
15 Mr. Rodio, why you are looking at it. If you did
16 get five requests and didn't respond, would that be
17 acceptable?

18 MR. SAHADY: Objection.

19 Q. Just -- he's not instructing you not to
20 answer. That is not for him to say.

21 MR. LOFTIS: You can't instruct him
22 not to answer.

23 MR. SAHADY: Well, I can. I can.

24 MR. LOFTIS: Only if it's

1 privileged.

2 MR. SAHADY: That is not something
3 that he decides, what is acceptable or not.

4 MR. LOFTIS: You can't testify
5 either.

6 MR. SAHADY: That's a question of
7 law for the jury to decide.

8 MR. LOFTIS: Well, you can object to
9 the form of the question but that is it.

10 MR. SAHADY: I am not so sure about
11 that.

12 MR. LOFTIS: Well, instruct him not
13 to answer.

14 MR. SAHADY: It doesn't give the
15 defendant carte blanche to ask any question under
16 the format agreed upon.

17 MR. LOFTIS: I am going to ask the
18 question.

19 MR. SAHADY: Go ahead. You have the
20 right to ask the question, and I instruct him not
21 to answer. Can we hear the question again?

22 Q. All right. Let me rephrase it. This is
23 in 2000, Mr. Rodio, correct?

24 A. It says -- I don't know. I cannot see

1 it. I will look. Yes. March 1st, 2000.

2 Q. You had been with the company for 23
3 years at that time?

4 A. Yes.

5 Q. All right. In your 23 years of
6 experience with the company, did you think it would
7 be acceptable if, in fact, it took five requests
8 before you responded to the regional office?

9 MR. SAHADY: Objection.

10 Q. Answer the question.

11 A. I have no answer to that.

12 Q. Does that mean you don't know?

13 A. Hmm.

14 Q. Does that mean you don't know whether it
15 would be acceptable or not?

16 MR. SAHADY: It hasn't been
17 established that he, in fact, ignored one, two,
18 three, four.

19 MR. LOFTIS: I am asking a
20 hypothetical question. That is all.

21 A. I never ignored things. I tried to
22 answer things in a proper time.

23 Q. If you received these five requests for
24 your responding, would that be acceptable? Just

1 yes or no.

2 MR. SAHADY: Objection.

3 A. I would answer requests in a reasonable
4 time if I received them. I wouldn't let them go.
5 I tried to answer every request that comes. I
6 tried to do the best I could.

7 MR. SAHADY: You've answered the
8 question.

9 Q. Number 4. Very briefly. What is a
10 personal performance report?

11 A. It's the manager's opinion. It's my
12 manager's opinion about how I did.

13 Q. Just so we can get some terms straight
14 that will help us going through. Says activities
15 conducted that line right there.

16 A. That --

17 Q. WW is work with?

18 A. Yes.

19 Q. AA is what?

20 A. AA is checking calls.

21 Q. What does AA stand for?

22 A. Hmm.

23 Q. What does AA stand for?

24 A. Accountability -- I couldn't tell you.

1 Q. What does TA stand for?

2 A. Territory analysis.

3 Q. Now, a work with is when your manager
4 actually goes out and goes into the store with you?

5 A. Yes.

6 Q. Not coming behind you, correct?

7 A. Yes.

8 Q. In a TA the manager would come behind
9 you in a day or so, correct?

10 A. Yes.

11 MR. SAHADY: Behind him meaning at
12 another time or physically behind him?

13 MR. LOFTIS: Physically behind him.
14 Well, not right behind him. It could be a day
15 later.

16 A. Could be a week later, a day later.

17 Q. Right. But on a work with, your manager
18 would be with you in the store, correct?

19 A. Yes.

20 Q. And the very last entry it says "work on
21 improving admin with ROU." Do you see that?

22 A. Yes.

23 Q. An ROU is what?

24 A. The regional office.

1 Q. That is where Mr. Kane works?

2 A. Yes.

3 Q. And what would be included within
4 administration?

5 A. It's a general statement.

6 Q. Do you know what was included?

7 A. It could be a wide range of things.

8 Q. Part of the --

9 A. It wasn't explained. This
10 administration includes a lot of things.

11 Q. If you go back to Exhibit 1, go to the
12 second page, left-hand column, you see where it
13 says managing administration? Again, yes or no.

14 A. Yes.

15 Q. Is it your understanding that those were
16 your administrative responsibilities?

17 A. Yes.

18 Q. Okay. Did you ever -- now, I am going
19 to flip you back and forth on that, and I apologize
20 for that, but if you go to Exhibit 4 --

21 A. Yes.

22 Q. Do you see that one?

23 A. Yes.

24 Q. I believe you are looking at one?

1 A. This is four.

2 Q. Right. Did Mr. Fasciani give you a copy
3 of that or show it to you?

4 A. It's four years ago. I honestly
5 couldn't tell you.

6 Q. Had you ever seen it before?

7 A. Again, this is four years ago.

8 Q. So you don't know whether you got it or
9 not? If you don't, that is fine.

10 A. It's something that happened four years
11 ago.

12 Q. I understand, Mr. Rodio. I am just
13 asking you whether or not you got a copy of it? If
14 you don't remember --

15 A. To be honest with you, I don't. I can't
16 recall.

17 Q. Did you ever tell Mr. Fasciani that you
18 didn't understand what was included within your
19 administrative responsibilities?

20 A. Not that I recall. Maybe I asked him a
21 question. I might have asked him for help on
22 something.

23 Q. Do you recall that specifically?

24 A. Might have been a new program, might be

1 uncertain of a new program, so I'd asked for
2 clarification.

3 Q. Did he provide the clarification when
4 you did?

5 A. Sometimes you would have to wait.

6 Q. Did he eventually provide the
7 clarification?

8 A. Majority of times, yes?

9 MR. LOFTIS: Mark 5.

10 (Exhibit Number 5 marked for
11 identification.)

12 Q. That's Exhibit 5. Do you see the
13 subject of this document is personal progress
14 report?

15 A. Yes.

16 Q. What is the purpose of this document?

17 MR. SAHADY: Objection.

18 Q. Do you know?

19 A. The purpose?

20 Q. Did you ever get these during the course
21 of your 23 years with the company or 26 years?

22 A. Yes.

23 Q. You got personal progress reports?

24 A. Yes.

1 Q. Why did you get them? What was the
2 purpose of it --

3 MR. SAHADY: Objection.

4 Q. -- if you know?

5 A. I couldn't tell you. It's the company
6 who wrote it for their information.

7 Q. Did they give you a copy of it? It says
8 Dear Mike.

9 A. I don't have a copy of it.

10 Q. So you don't know whether you got it or
11 not?

12 A. Well, it says Dear Mike so I really
13 couldn't tell you.

14 Q. Mr. Rodio, you received personal
15 progress reports from other managers other than
16 Mr. Fasciani; is that correct?

17 A. Yes.

18 Q. On the bottom again it mentions -- did
19 you ever tell any of your managers you didn't
20 understand why you were getting these personal
21 progress reports or say what are they for?

22 A. I don't believe I ever said that.

23 Q. Now, the administrative communication at
24 the bottom of the page it says "you are not

1 updating your master list on a call by call basis
2 as instructed at our last two meetings." What does
3 that refer to? What is your master list?

4 A. As far as I know, I always updated my
5 master list.

6 Q. Do you see where I was reading?

7 A. Yes.

8 Q. Where was it? It's on the first page.

9 MR. SAHADY: Very last line,
10 Mr. Rodio.

11 Q. What is the master list?

12 A. It's your list of calls.

13 MR. SAHADY: I am sorry. I didn't
14 hear that.

15 A. It's a list of your accounts.

16 Q. So it's a list of all of your accounts
17 within your territory?

18 A. Yes.

19 Q. And you were suppose -- how did you
20 update that?

21 A. Well, if the volume is changed, you
22 change the volume. If the phone number changed,
23 you change the phone number. If the name of the
24 account changed, you change the name of the

1 account. Whatever you had to do.

2 Q. And if the company believed that you
3 were not updating your master list, how would they
4 know that?

5 A. This isn't the company. This is
6 Mr. Fasciani.

7 Q. He was your manager; he worked for the
8 company?

9 A. As far as I know, I updated my master
10 list to the best of my ability.

11 Q. To the best of your ability?

12 A. Yes.

13 Q. So how would Mr. Fasciani -- when you
14 updated your master list, would that be something
15 you sent in to the company?

16 A. No. It was something you do on the
17 computer.

18 Q. With your lap top?

19 A. Yes.

20 Q. So when you'd update it, you would go
21 into the store and you would update everything in
22 the store, and then you would go home at night --

23 A. Communicate.

24 Q. -- and communicate which would down load

1 all of that information into a master computer,
2 correct?

3 A. Yes.

4 Q. And then Mr. Fasciani would check the
5 master computer to see if you were updating your
6 master list on a call by call basis, correct?

7 A. That is correct. I --

8 MR. SAHADY: Just wait.

9 Q. Were you aware that Mr. Fasciani -- did
10 he ever comment to you or do you ever recall being
11 told that your master list was not being updated on
12 a call by call basis?

13 A. I don't recall that.

14 Q. On the second page -- let me ask you
15 this. Back on that master list on a call by call
16 basis, would you believe that would be
17 administrative in nature?

18 A. Yes, it's administrative. Actually,
19 it's not my opinion. It's the company's opinion.

20 Q. Okay, but they viewed it as an
21 administrative function --

22 MR. SAHADY: Objection.

23 Q. -- to the best of your knowledge?

24 MR. SAHADY: Objection.

1 Q. You can answer.

2 MR. SAHADY: You are asking him what
3 is in the mind of the company.

4 A. It's not my opinion. It's the company's
5 opinion.

6 Q. So as we sit here today, after 26 years
7 with the company, you do not have an understanding
8 that updating the list was part of your
9 administrative responsibilities?

10 MR. SAHADY: He answered that
11 question.

12 A. I did. I said I updated the master list
13 every time.

14 Q. That isn't what I asked you. Did you --
15 did you consider that part of your administrative
16 responsibilities?

17 MR. SAHADY: He answered that
18 question.

19 A. That --

20 Q. What was the answer?

21 A. -- I did to my best ability.

22 Q. That wasn't the question.

23 MR. LOFTIS: I don't think he's
24 answered the question.

1 MR. SAHADY: You went back to
2 Exhibit 1 and he answered at that time he
3 recognized that to be part of his --

4 MR. LOFTIS: I am asking him a
5 different question now.

6 MR. SAHADY: Not quite. Same
7 question. Different form.

8 Q. Did you view updating your master list
9 to be part of your administrative duties?

10 A. I updated the master list to the best of
11 my ability.

12 Q. That is not what I asked you. I will
13 ask you the question over and over again until you
14 answer it. Did you view updating your master list
15 as part of your administrative responsibilities?
16 Just a yes or no.

17 A. Yes, I updated my master list.

18 Q. Did you view that as an administrative
19 responsibility of your job? Yes or no.

20 A. Upgrading the list, yes.

21 Q. Okay. Thank you. The second page
22 refers to the folder program. What is that?

23 A. At that time we had folders that we
24 would give to the stores with all their contract

1 information and what their responsibilities were.

2 Q. And is that something that you would
3 leave in the store?

4 A. Yes.

5 Q. Would you report in your lap top that
6 you had left it in the store?

7 A. I don't think -- I don't believe. I
8 don't recall. I think you would just -- obviously
9 if you had a contract, you had to report the
10 contract in your computer.

11 Q. And that would be administrative in
12 nature?

13 A. Yes.

14 Q. Number 3 says "you are not, as I
15 requested, submitting a bi-weekly status report
16 every two weeks."

17 A. I don't recall ever seeing that.

18 Q. Do you recall being asked to submit
19 bi-weekly status reports every two weeks?

20 A. If I was requested to do it, I did it.

21 Q. And how would you submit those?

22 A. I don't recall. It's four years ago. I
23 couldn't tell you.

24 Q. Via a lap top?

1 A. If it was requested in lap top, I did
2 it.

3 Q. How else would you submit bi-weekly --
4 how else would you submit status reports to Mr.
5 Fasciani?

6 A. I don't know. If he asked on the
7 computer, it was by computer. I don't recall this
8 statement.

9 Q. Do you recall being asked to submit
10 bi-weekly status reports?

11 A. Again, it's four years ago. I don't
12 recall.

13 Q. During the entire time you worked with
14 the company, do you ever recall being asked to
15 submit bi-weekly status reports to keep your
16 manager apprised of progress in your assignment?

17 A. I don't recall.

18 Q. Okay. And Number 4 refers to call count
19 is below division average, references your planning
20 calendar. What is that?

21 A. The planning calendar is a calendar
22 where what calls you were going to.

23 Q. And would that be something that was on
24 your lap top?

1 A. Yes. We also had a physical one.

2 Q. Did you keep both?

3 A. I think I helped develop the program.

4 Q. Did you keep both?

5 A. We were only requested to keep a
6 physical one if I remember.

7 Q. So not in the lap top?

8 A. I believe. To be honest, I don't
9 recall. I think I may have had one in the lap top,
10 but I don't recall.

11 Q. Did you share that with Mr. Fasciani,
12 your planning calendar?

13 A. If he asked for it, I shared it with
14 him.

15 MR. LOFTIS: Mark 6.

16 (Exhibit Number 6 marked for
17 identification.)

18 Q. All right. Exhibit 6. All right.
19 Showing you Exhibit 6. Do you recall receiving
20 this document, Mr. Rodio? It says Dear Mike.

21 A. Again, it's four years ago. I don't
22 recall.

23 Q. Do you recall receiving mid year
24 performance reviews on occasion?

1 A. Yes.

2 Q. Product availability, do you see that
3 one?

4 A. Yes.

5 Q. That was very complimentary, correct?

6 A. Yes.

7 Q. "Presence - very good use of temporary
8 displays." Again that's complimentary, correct?

9 A. Yes.

10 Q. "Promotion - very good implementation."
11 Complimentary?

12 A. Yes.

13 Q. On the bottom of the page call --
14 coverage/call account and that is positive,
15 correct?

16 A. Yes.

17 Q. And administrative/organization it says
18 you have improved on handling of the administrative
19 organization very well in 2000, continued to
20 improve on the use of lap top tools. Do you notice
21 that?

22 A. That was his opinion.

23 Q. That you need to continue to improve on
24 the use of lap top tools. I know that was his

1 opinion. Were you aware of that opinion?

2 A. I worked very hard on always reporting
3 accurately, and this report was his opinion. His
4 opinion at that time was positive.

5 Q. The overall opinion was positive, wasn't
6 it?

7 A. Yes.

8 Q. And at least at the time of this mid
9 year review on July 20, 2000, in Mr. Fasciani's
10 opinion, your administrative functions were being
11 handled satisfactory. Would you agree?

12 A. According to this document.

13 Q. And other than the information that you
14 submitted to the company, would Mr. Fasciani have
15 any way of knowing whether or not your
16 administrative responsibilities were being properly
17 performed or not?

18 A. I can't really tell you that. Mr.
19 Fasciani would know.

20 MR. LOFTIS: Mark that.

21 (Exhibit Number 7 marked for
22 identification.)

23 Q. Number 7, Mr. Rodio, I believe that's an
24 evaluation you received in January of '01

1 reflecting the company's evaluation of your
2 performance for calendar year 2000; is that
3 correct?

4 A. It's interesting. Our goal was to make
5 100 percent coverage each month but I was below the
6 goal --

7 MR. SAHADY: Michael, wait for the
8 question.

9 THE DEPONENT: It's interesting.

10 Q. I just ask you if you can identify the
11 document?

12 A. Yes. I have a copy.

13 Q. Now, you were talking about call count.
14 You made some comment about that. Was that on the
15 second page?

16 A. I don't know.

17 Q. Was that where you were reading?

18 A. Yes.

19 Q. And what it says is you achieved 100
20 percent only three of the 11 months, correct?

21 A. Yes.

22 Q. It didn't say the goal was 100 percent,
23 did it?

24 A. You could go 99 percent but you didn't

1 achieve 100 percent.

2 Q. Do you see the very next point number 2?
3 What was the goal?

4 A. I believe the goal that year was around
5 92 percent, 95 percent coverage. I believe I was
6 in that range. I didn't achieve 100 percent.

7 Q. I believe it says that yours was 8.65.

8 A. Yes. That is calls per day.

9 Q. Okay. Well, what was the coverage goal?

10 A. Usually goals are somewhere between 92
11 percent and 95 percent so you --

12 Q. And where were you -- where do you
13 recall that you were on coverage?

14 A. As far as I know, I was in the 90s.
15 Sometimes would be at 100. That's hard. I cannot
16 remember four years ago.

17 Q. I noticed on your evaluation in January
18 of 2000 which was Exhibit 2 you wrote a response
19 that you disagree with that evaluation. Did you
20 write a response -- did you disagree with anything
21 on Exhibit Number 7?

22 A. I showed up at meetings always at the
23 time Mr. Fasciani told me to be there.

24 Q. I am sorry.

1 A. It says I was late for meetings. I
2 showed up when he told me to be there.

3 Q. All right. Do you recall my question?

4 A. Disagree? Yes, I definitely disagree.

5 Q. Now, I asked you if you had written
6 anything that stated that you disagreed with that
7 evaluation?

8 A. Well, I think you would sit down and we
9 could agree or disagree, and I said I would
10 disagree.

11 Q. Go back to Exhibit 2. Go to page 46 on
12 that document.

13 A. Okay.

14 Q. So you wrote a written response
15 explaining why you disagree with the evaluation,
16 correct?

17 A. Obviously, yes.

18 Q. All right. On page 42 which is the
19 cover of that document --

20 A. Yes.

21 Q. -- you refused to sign it because you
22 disagreed with it, correct?

23 A. Yes.

24 Q. And that was your right to do that?

1 A. Yes.

2 Q. All right. Again, don't go away yet.

3 Page 46 of that document --

4 A. Oh, there is another addendum to it,
5 too.

6 Q. I'm aware of that. Page 46.

7 MR. SAHADY: Of exhibit what?

8 MR. LOFTIS: Two.

9 Q. In the middle of that sentence it says
10 "my paperwork was on time unless there were a
11 problem in the system." Do you see that?

12 A. Where?

13 Q. It's right in the middle.

14 A. Yes. They had times when there was no
15 communication at all.

16 Q. So it was your -- were you explaining
17 that you weren't responsible for any of the
18 administrative deficiencies that were noted?

19 A. If I had to get something in, I got it
20 in to the best of my ability unless there was
21 something wrong with the system. There were times
22 when the computers went down.

23 Q. Down in what sense?

24 A. You couldn't communicate.

1 Q. Was that because the battery was dead or
2 just because?

3 A. No, because the system.

4 Q. The whole system was down so that would
5 have impacted every sales rep?

6 A. Yes. Well, it depends on if that
7 salesman had to report certain things.

8 Q. But if the entire system was down,
9 nobody could communicate?

10 A. Makes sense.

11 Q. All right. Now we can go back to
12 Exhibit 7. First page of that document you signed,
13 right?

14 A. Yes.

15 Q. You didn't refuse to sign it? You
16 didn't say that you disagreed with it?

17 A. Yes.

18 Q. All right. And did -- to the best of my
19 knowledge, you had no response that was attached to
20 it expressing your disagreement. Are you aware of
21 any kind?

22 A. Again, this is something that happened
23 four years ago. I cannot tell you what I was
24 thinking four years ago.

1 Q. Do you have any document that was a
2 response to this evaluation?

3 A. There is nothing here, so I imagine
4 there isn't.

5 Q. Do you personally have anything?

6 A. Response to this?

7 Q. A written response.

8 A. I don't believe so. I don't know.

9 Q. And your overall rating that year was
10 overall Number 7?

11 A. That is what it says.

12 Q. Was that consistent with the evaluation
13 that you were to receive in the past when you
14 received others actually?

15 A. Yes, from different division managers.

16 Q. And this evaluation was from your
17 manager, Mr. Fasciani, and it was signed off by his
18 manager Mr. Kane, correct?

19 A. Yes.

20 Q. And those were the same people that
21 evaluated you as needs improvement the prior year,
22 correct?

23 A. Yes, the same people.

24 Q. All right. Did you believe your

1 performance had improved over the course of that
2 year?

3 A. I performed the same all the time. I
4 did the best I could all the time, and there were
5 some people's opinion that thought it was good and
6 some people thought it was bad, so it's their
7 opinion.

8 Q. And so why do you think Mr. Fasciani
9 disagreed with you over your performance?

10 A. Because we sat in a car one day and he
11 said he didn't like me, and if I didn't do what he
12 said, he was going to terminate me.

13 Q. And when did this take place?

14 A. 2001. He also stood out in the parking
15 lot and threatened me, said he was going to ruin my
16 career, going to ruin me. At that time, I called
17 Mr. Kane, and that is when all hell broke out. He
18 said he was going to go out and TA me every week.
19 He was going to destroy me. I called the office
20 and told them what he said, and the way they
21 handled it is they came out and reprimanded me.

22 Q. Let's back up and get through this a
23 little bit at a time so I understand it. You
24 understand I need to be able to put timing,

1 sequence, location and other things so that I will
2 understand. The conversation where he said -- when
3 Mr. Fasciani told you he didn't like you did that
4 take place in a car?

5 A. Yes.

6 Q. Was that in the same part of the
7 conversation that you later talked about taking
8 place in a parking lot? Was that all the same?

9 A. No. That was a different occurrence.

10 Q. Two different conversations?

11 A. Yes.

12 Q. All right. When did the conversation --
13 when was this conversation when you said Mr.
14 Fasciani said he did not like you? When did that
15 take place?

16 A. I believe it was in 2000.

17 Q. Do you have any notes or records
18 anywhere that you could reflect when that was?

19 A. Yes. They are all written notes. I
20 have all written notes.

21 Q. Where are your notes?

22 A. I don't have them with me. I would have
23 to look for them.

24 Q. All right. Did you make notes as you

1 went along during the course of your employment
2 with the company?

3 A. Different notes, yes.

4 Q. And did you provide those to your
5 attorney?

6 A. He's seen them, I believe.

7 Q. Did you turn them over to him or did you
8 keep them?

9 MR. SAHADY: Objection. Don't
10 answer. That's privileged.

11 MR. LOFTIS: I don't know whether
12 it's privileged.

13 MR. SAHADY: When he and I get
14 together it's absolutely privileged.

15 A. I think you have copies.

16 MR. SAHADY: Objection. Don't
17 answer.

18 THE DEPONENT: Okay.

19 Q. Were these notes you made
20 simultaneously? Do you understand what I am asking
21 you? In other words, did you make the notes
22 shortly after an event took place?

23 A. I kept the notes, yes.

24 Q. That is not -- when did you make them?

1 If this conversation took place in a car, when
2 would you have made the notes?

3 A. I don't know the exact date.

4 Q. Would it have been within a day or two?

5 A. Possibly.

6 Q. I am just trying to understand. Were
7 you making notes as you were working for the
8 company or is it something like after you were
9 terminated you sat down and wrote the history?
10 Which is it?

11 A. I mean -- no. I kept the notes during
12 the company.

13 Q. Now, how many pages of notes do you
14 think that is?

15 A. I couldn't tell you.

16 Q. More than ten?

17 A. Possibly.

18 Q. And if you had those notes --

19 A. Actually --

20 Q. If you had those notes in front of you --
21 were they dated?

22 A. Yes. I believe I sent them to the
23 company anyway.

24 Q. Okay. Let me finish about these notes.

1 If you had those notes in front of you, you could
2 tell me when that conversation took place, couldn't
3 you?

4 A. Approximately.

5 Q. And you could give me a better idea,
6 probably be able to testify more fully about what
7 you recall from the conversation, correct?

8 A. That would make sense.

9 Q. But you believe it was sometime during
10 2000?

11 A. I believe.

12 Q. What do you recall being -- how did the
13 subject come up? What were you and Mr. Fasciani
14 doing together that day?

15 A. We worked on some calls, and it was near
16 the end of the day and the comment came out of his
17 mouth.

18 Q. Had he been dissatisfied with some of
19 the calls?

20 A. Which comment are you talking about?

21 Q. When you said you had a conversation
22 when you were in the car, you said he told you he
23 did not like me.

24 A. Yes.

1 Q. And that was at the end of a work with?

2 A. Yes.

3 Q. Had he been dissatisfied with some of
4 your calls?

5 A. No. He said he didn't like my attitude.

6 Q. And why do you think he didn't like your
7 attitude or didn't like you?

8 A. I think he may have been pushed from
9 above because previous management told me that the
10 regional manager was looking very closely at my
11 calls which means they were looking for something
12 to terminate me over. This is what my previous
13 manager told me.

14 Q. And who was your previous manager?

15 A. Art Scott.

16 Q. Who did Art Scott tell you -- who did he
17 tell you was looking at your calls?

18 A. Mr. Kane. He would look very closely at
19 my calls looking for anything he could find and
20 other assignments he would overlook things. If
21 something was out of place, he would overlook it.

22 Q. Is that exactly what Art told you?

23 A. Exactly.

24 Q. Did you make a note of that

1 conversation?

2 A. It could be in the notes.

3 Q. You have those notes with you today,
4 right here on you, don't you?

5 A. I am not sure.

6 Q. What do you have in front of you -- that
7 notebook that is opened up --

8 A. It's different things, government
9 actions, contract, state minimum pricing laws,
10 things.

11 Q. When did you put that together?

12 A. Kept it over the years.

13 Q. It relates all to your employment at
14 R.J. Reynolds?

15 A. Some of it does, yes. A lot of it does.
16 Some doesn't.

17 Q. Does any of it have anything to do with
18 your claims in this lawsuit?

19 A. I believe so.

20 Q. Okay. So you think Mr. Kane didn't like
21 you?

22 A. For some reason, yes.

23 Q. Do you know why?

24 A. No.

1 Q. Do you have any reason -- any fathomable
2 reason in the world that you believe either Mr.
3 Fasciani or Mr. Kane didn't like you?

4 A. I have no idea. Mr. Fasciani would do
5 whatever Mr. Kane told him.

6 Q. Do you think Mr. Fasciani was being
7 ordered to do all of this?

8 A. I have no idea. It's possible.

9 Q. But you don't know?

10 A. Only Mr. Kane and Mr. Fasciani.

11 Q. And what about the conversation in the
12 parking lot? Let me --

13 A. There's a long story.

14 MR. SAHADY: Just wait for the
15 question.

16 Q. When did it take place?

17 A. Early -- late July or early August of
18 2001.

19 Q. And was that after a work with as well?

20 A. No. We had a meeting previous, and
21 Mr. Fasciani wanted to know who was taking vacation
22 in August, and people raised their hands, and he
23 went into a rage and started saying this isn't
24 right, this isn't fair, right in front of the whole

1 division.

2 Q. What was not right? What was not fair?

3 A. That is what we were trying to figure
4 out.

5 Q. Who was present for this?

6 A. Our division.

7 Q. So all the sales reps would have been
8 there?

9 A. Most of them. Mr. Fasciani pointed to
10 me, said I want to work with you Tuesday. He
11 singled me out. At that time, he asked me if I was
12 going to take a vacation. I said, I would like to
13 take a week off in August. He got upset about it.
14 I said, Well, if it's going to upset you, how about
15 if I take Fridays and Mondays? I will be around
16 during the week if something comes up and still
17 have time with my family, and he would voice mail
18 me while I was gone on my vacation. He would voice
19 mail me saying I want to see you Tuesday to do your
20 evaluation. When I came back on Tuesday, I had to
21 take time off the job, take time away from my
22 calls, distribution. We were working a new brand
23 at the time, trying to introduce it, so if you take
24 a person away from his call count, it makes it much

1 more difficult to get the distribution. We met
2 that day, and I asked him, Do you have the
3 evaluation? He says, I forgot it in my car. I
4 said, Go to your car. When he got to his car, he
5 said, I must have left it home, so I asked him --
6 well, if we're meeting to do my evaluation, why
7 would you leave the thing at home? At that time he
8 blew in a fit in the parking lot, said I am going
9 to ruin you. I am going to destroy your career.
10 He started yelling at me. At that time I called
11 Mr. Kane's office and said that Carl was out in the
12 parking lot yelling at me saying he was going to
13 destroy me and was there anyway we could work
14 things out, if we could meet to shakes hands and go
15 to work with each other, and so I went away that
16 weekend. I was trying to -- I had -- I was trying
17 to enjoy my time with my family, and he voice
18 mailed me again, said he was sorry about the blow
19 out on voice mail and would like me to meet with
20 him again to go over things, and then what he did --
21 we met that day. I waited for him, waited for him.
22 He didn't show up on time. I finally voice mailed
23 him. Carl, where are you? You're suppose to meet
24 me. He showed up a little late, then we went out

1 and looked at calls, and the calls were in good
2 shape. Basically, he looked for any little thing
3 he could find to make me look -- to downplay me and
4 then reprimanded me that day.

5 Q. Did you get a reprimand the same day as
6 you did the work with?

7 A. No.

8 Q. Two days later?

9 A. No. We -- first time I called Mr. Kane.
10 The second meeting is when he went out -- after I
11 talked to Mr. Kane, asked if we could work things
12 out and have a meeting, Mr. Fasciani came out and
13 did a work with and then reprimanded me after that,
14 after the first call.

15 Q. Now, how much time was between the
16 conversation in the car and the conversation in the
17 parking lot?

18 A. It's about a year. I was always working
19 under duress, kind of like that.

20 Q. Let me take you back to Exhibit 7. Is
21 that the evaluation? What exhibit are you looking
22 at?

23 A. 7.

24 Q. Now, was this evaluation before or after

1 the conversation in which you were sitting in the
2 car?

3 A. This was after.

4 Q. And did you ever get any insight as to
5 why you thought Mr. Fasciani and Mr. Kane didn't
6 like you or were out to get you?

7 A. I don't know. I worked hard, went to
8 the jobs every week all the time. I know they were
9 giving other reps in my category -- age category a
10 hard time.

11 Q. Who were those?

12 A. Mr. Pondelli and Mr. Debugue that I know
13 of.

14 Q. I am sorry.

15 A. Mr. Pondelli. Mr. Debugue. I heard
16 that Mr. Fasciani gave some reps down in Louisiana
17 a very difficult time.

18 Q. Where did you hear that?

19 A. I met the reps.

20 Q. Who were they?

21 A. Forget his name. Dean. I cannot think
22 of his last name.

23 Q. Why do you think you were terminated?

24 MR. SAHADY: Objection.

1 MR. LOFTIS: He can answer that.

2 MR. SAHADY: There was no reason for
3 his termination. That is the answer.

4 MR. LOFTIS: Well, then he's got no
5 lawsuit.

6 Q. You are saying there was no motive of
7 any kind for your termination?

8 A. I really can't answer that.

9 MR. SAHADY: No. He's saying there
10 was no good reason, but there were motives for his
11 termination.

12 MR. HENSON: Who are we deposing
13 here?

14 MR. SAHADY: I am not here as a wall
15 flower.

16 MR. HENSON: You are not here to
17 answer questions either.

18 MR. SAHADY: I have a right to
19 intervene when I think those questions are unfair.

20 MR. HENSON: I see completely
21 through this.

22 Q. What is the basis for your lawsuit?

23 MR. SAHADY: That is a legal
24 question again.

1 A. I am not a lawyer.

2 Q. So you don't even know why you sued the
3 company?

4 A. Again, you have to talk to my attorney.

5 Q. No. I am talking to you. Why do you
6 believe the company terminated you?

7 A. Why do I believe? It's improper.

8 Q. What was improper about it?

9 A. I did my job well. I went to work every
10 day. I did it to my best ability and two
11 individuals --

12 Q. What law do -- why do you think the
13 company violated some legal obligation to you when
14 you were terminated?

15 MR. SAHADY: You don't expect him to
16 answer that, do you?

17 A. I don't have an answer to that. You
18 would have to talk with my attorney.

19 Q. What is the basis for your lawsuit?

20 A. They definitely harmed me.

21 Q. Well, why are you suing the company?
22 What did they do wrong to you?

23 MR. SAHADY: Objection. You are
24 asking for a legal basis.

1 MR. LOFTIS: I think he should know
2 that.

3 A. I have a claim against R.J. Reynolds.

4 Q. And what's the claim? What is the
5 claim? Why do you think you were terminated?

6 A. It's improper.

7 Q. What was improper about it?

8 A. I don't know. That's for legal people
9 to say. I just present the case.

10 Q. You just what?

11 A. I am just presenting the case. That is
12 why I have an attorney.

13 Q. Do you think it was because of your age?

14 A. I don't know what the reason is.

15 Q. So you don't have any idea why the
16 company terminated you?

17 A. It could have been age.

18 Q. It could have been they just didn't like
19 you?

20 A. I really don't know.

21 Q. It could have been they didn't like you
22 because they didn't like your attitude, correct

23 A. I have no idea.

24 MR. LOFTIS: Let's take a break.

1 MR. SAHADY: Sure.

2 (Short break taken.)

3 Q. Mr. Rodio, in this lawsuit do you have
4 any understanding of what you claim the company did
5 that was unlawful?

6 A. Well --

7 MR. SAHADY: I object to that but
8 you may answer. I object.

9 A. Possibly. I think they terminated me to
10 deny me my future benefit.

11 Q. Have you ever testified to that effect
12 before?

13 A. I've never been in a court before.

14 Q. Have you ever testified under oath
15 before?

16 A. Never been in court before, no.

17 Q. That is not -- have you ever testified
18 under oath before?

19 A. I've never been in a court. I've never
20 testified under oath.

21 Q. Do you recall testify about your
22 unemployment?

23 A. Oh, yes.

24 Q. Were you under oath?

1 A. Yes. That's right. It was on a
2 telephone.

3 Q. But you were under oath?

4 A. Yes, sir. I've never seen that. Can I
5 see that?

6 MR. SAHADY: Just wait for the
7 question.

8 Q. Let me -- I am going to direct your
9 attention to page 66. There is -- you will see on
10 the left-hand column there are line numbers. Do
11 you see there is a question again there line 10.
12 Do you see that?

13 A. Yes.

14 Q. What is the question?

15 A. "What do you think happened?"

16 Q. Go on.

17 A. "Why were they all of a sudden
18 dissatisfied with you?"

19 Q. What was your answer?

20 A. "Well, I was a grandfathered employee
21 from 1988. I had 26 years. In four more years, I
22 would have 30. I would get insurance for the rest
23 of my life at the going rate and my pension, and
24 also if there was some sort of buy-out package, we

1 get two weeks' pay severance package for each year.
2 I am not the only employee. There were other
3 people that were kind of treated the same way as I
4 was, and they were all in the same category of my
5 age in years. And I believe that's what a lot of
6 this is about."

7 Q. Now, this took place -- well, it's
8 whenever it took place.

9 A. There was a strong rumor of a buy-out
10 coming out.

11 Q. I am sorry. What?

12 A. Nothing.

13 Q. What did you say?

14 A. I said there was a rumor that we were
15 going to be merging. There was a buy-out in the
16 works.

17 Q. What was the rumor? Who was rumored --
18 who was supposed to buy out the company?

19 A. There was -- we had a meeting and people
20 rumored that there was another restructuring
21 company coming. That is all.

22 Q. Was there? Do you recall?

23 A. There ended up being a merger.

24 Q. And when did that take place?

1 A. I believe just a few months ago.

2 Q. Two years later?

3 A. Yes. There were rumors.

4 Q. So at the time of this testimony

5 whenever it was -- this will be dated --

6 MR. SAHADY: It was January 29,

7 2003.

8 Q. -- was that your opinion at that time as

9 to why you were terminated?

10 A. They asked me for an opinion. That was

11 the best I could come up with at that time.

12 Q. Well, was that what you believed at that

13 time?

14 A. I said that. I must have believed it.

15 Q. Well, did you believe there was any

16 other reason at that time?

17 A. That was my best knowledge.

18 Q. Is what you just read from your prior

19 testimony is that what you believe today?

20 A. That is part, yes.

21 Q. Do you believe there were any other

22 reasons other than that as you sit here today?

23 A. I don't know the other reasons. The

24 only people that know -- the other reasons are

1 Mr. Fasciani and Mr. Kane.

2 Q. Do you have an opinion yourself as to
3 whether there was any other reason other than what
4 you just read as to why you were terminated?

5 A. It was probably denying me of my future
6 benefits.

7 MR. LOFTIS: Can you read back the
8 question, please.

9 (Record read.)

10 Q. Is that what you believe today?

11 A. Yes.

12 Q. Do you believe there was any other
13 reason as you sit here today?

14 A. The only people that know is
15 R.J. Reynolds.

16 Q. I am asking your opinion. You have sued
17 the company.

18 A. Yes.

19 Q. Are you claiming there was anything
20 other than to deny you your pension as the reason
21 you were terminated?

22 A. My insurance, my pension, the proper
23 amount of pension and any future packages.

24 Q. Anything else? Any other reason that

1 you believe that you were terminated other than to
2 deny you those benefits?

3 A. I don't recall anything else.

4 Q. So your claim against the company is
5 that you were terminated because you were
6 approaching age 55 and 30 years of service,
7 correct?

8 A. Is that what it says?

9 Q. It says in four more years, I would have
10 30 years.

11 A. That is what I said.

12 Q. And that is it?

13 A. That is -- that is what I said. It's
14 right there.

15 Q. And you have nothing else to say today
16 as to that issue?

17 A. No. It's just what I said. That is all
18 I can say.

19 Q. Okay. Now, in your answer at the
20 unemployment hearing you said there were other
21 people --

22 MR. SAHADY: What page?

23 MR. LOFTIS: Same page 66.

24 Q. It said that other people that were kind

1 of devoid the same way as I was. Who were you
2 referring?

3 A. There was Ken Pondelli in Boston, Paul
4 Debugue. There is a fellow in California whose
5 name I don't know. I heard reports of other
6 people.

7 Q. Why would you get those reports?

8 A. Just word-of-mouth.

9 Q. From whom, directly from the division?

10 A. I am not -- come from other reps. I
11 cannot remember.

12 Q. Do you have -- do you understand the
13 difference between firsthand and secondhand?

14 A. Hmm.

15 Q. Did Mr. Debugue -- did you have a
16 conversation with Mr. Debugue about that issue?

17 A. These are just comments that I heard.

18 Q. No, sir. That is not what I asked you.
19 Did you and Mr. Debugue talk about what was
20 happening to him with respect to the company trying
21 to get rid of him because he was approaching 30
22 years?

23 A. He may have mentioned something in
24 passing. I don't recall. It was four or five

1 years ago. I cannot recall.

2 Q. Why do you think he was someone that was
3 treated the same way as you were?

4 A. I just heard that through the grapevine.

5 Q. You don't know whether that was true or
6 not? It was through the grapevine?

7 A. Right.

8 Q. So you don't know whether it is true or
9 not, do you?

10 A. I didn't. Only he knows if it is.

11 Q. Mr. Pondelli?

12 A. Mr. Pondelli.

13 Q. Is that more grapevine?

14 A. Yes.

15 Q. And I'd have to ask him if he felt the
16 same way that you did?

17 A. I guess you would.

18 Q. Do you have a list of these people
19 somewhere?

20 A. No.

21 Q. Do you have them written down in your
22 notes?

23 A. Just words that people -- things I heard
24 through the grapevine.

1 Q. Is all of this stuff you heard through
2 the grapevine? To the extent that you remember
3 today or later a name of someone --

4 A. Something happened four years ago -- I
5 cannot remember exactly what happened four years
6 ago.

7 Q. Did you ever talk to any of these people
8 personally?

9 A. I worked with them, yes.

10 Q. Did you ever talk to them about the
11 issue that the company was trying to get rid of
12 them before they got their 30 years in?

13 A. That might have come up in conversation
14 at a party or something. I don't know.

15 Q. Do you remember as you sit here today?
16 Yes or no.

17 A. I don't recall.

18 Q. Okay. Did you -- how did you hear about
19 the person in California? Did you actually talk to
20 that person or was that grapevine as well?

21 A. We were talking amongst some reps, and
22 one of reps had mentioned a person in California
23 was going through something similar.

24 Q. Who were you talking to?